



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

FEB 04 2020

Mr. Lance R. LeFleur
Director
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Dear Mr. LeFleur:

The purpose of this letter is to approve Alabama's designated use revision submitted by letter to the U.S. Environmental Protection Agency dated November 4, 2019, and officially received on December 17, 2019. In your letter, written to Regional Administrator Mary Walker, you submitted a revision which modified the use designation for Duck River (Duck Lake) in Cullman County, Alabama, to include the Public Water Supply (PWS) use classification. By adding the PWS use designation, Alabama has specified the appropriate water uses to be achieved and protected, consistent with 40 C.F.R. §131.10(a). The Duck River (Duck Lake) segment, as well as each segment above and below this segment, both identified as "Duck River," were included by name in the Department's Administrative Code Chapter 335-6-11 Water Use Classifications for Interstate Waters, Rule 335-6-11-.01(2) Black Warrior River Basin. These segments retain the applicable Fish and Wildlife use classification and are also consistent with 40 C.F.R. §131.10(a).

A certification letter from the Attorney General, dated September 25, 2019, was included in the submission from Alabama, and concludes that the revision was duly adopted pursuant to state law and is valid and enforceable in the state of Alabama as of October 4, 2019. In accordance with 40 C.F.R. §131.21(c), new and revised state and tribal water quality standards are not effective for Clean Water Act (CWA) purposes until approved by the EPA. The EPA has concluded the revisions are consistent with the goals of Section 101(a) of the CWA and the implementing regulations at 40 C.F.R. Part 131. In accordance with Section 303(c) of the CWA and 40 C.F.R. Part 131, and as laid out in the enclosed decision document, the EPA is approving this revision.

If you have any questions, please feel free to contact me at (404) 562-9345 or have a member of your staff contact Mrs. Lydia Mayo at (404) 562-9247 or mayo.lydia@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Gettle", written over a horizontal line.

Jeaneanne M. Gettle, Director
Water Division

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**Decision Document of the United States Environmental Protection Agency Determination
Under Section 303(c) of the Clean Water Act Review of Alabama's
2019 Reclassification for Duck Lake (Black Warrior River Basin)**

Background

The Alabama Department of Environmental Management (Department) added the Primary Water Supply (PWS) use classification at the Department's Administrative Code Chapter 335-6-11 Water Use Classifications for Interstate Waters, Rule 335-6-11-.01(2) Black Warrior River Basin for one segment. One previously unnamed waterbody segment is now identified as "Duck River (Duck Lake)" located in Cullman County, Alabama, and includes the PWS use classification. This classification extends throughout the segment from the dam to the extent of the reservoir. The PWS use designation protects the uses of drinking water supply and food-processing purposes, and these uses are subject to the treatment approved by the Department to meet the requirements of this use. The Department also identified by name two previously unnamed segments which are now identified as "Duck River" that are located directly above and below the Duck River (Duck Lake) segment also in Cullman County, Alabama. These two segments, as well as the Duck River (Duck Lake) segment, retain the use classification of Fish and Wildlife (F&W) that previously applied even though the segments were not identified by name. The F&W classification and water quality criteria for this class protect the uses of fishing, propagation of fish, aquatic life, and wildlife and include other uses such as incidental water contact and whole-body water-contact recreation. In accordance with 40 C.F.R. §131.10(a), the state of Alabama has included the PWS use designation for Duck River (Duck Lake) and has specified the appropriate and existing water uses to be achieved and protected.

Clean Water Act Requirements

Under Section 303(c) of the Clean Water Act (CWA) and federal implementing regulations at 40 C.F.R. Part 131, states and authorized tribes have the primary responsibility for reviewing, establishing and revising water quality standards (WQS), which consist of the designated uses of a waterbody or waterbody segment, the water quality criteria necessary to protect those designated uses and an antidegradation policy. The regulations at 40 C.F.R. §§131.10, 131.11 and 131.12 provide the minimum expectations for designated uses, water quality criteria and antidegradation, respectively.

Each state or tribe must follow its own legal procedures for adopting WQS. 40 C.F.R. §131.6(e). The state or tribe must submit certification by the appropriate legal authority within the state or tribe that the WQS were duly adopted pursuant to state or tribal law.

Section 303(c) of the CWA also requires states and tribes to submit new or revised WQS to the EPA for review. The EPA is required to review these changes to ensure revisions to WQS are consistent with the CWA. When the EPA approves a state or tribal WQS, it becomes the applicable WQS for purposes of the CWA and 40 C.F.R. §131.21(c)(2).

Endangered Species Act Requirements

Section 7(a)(2) of the Endangered Species Act requires federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service to ensure that their actions are not likely to jeopardize the continued existence of federally listed species or result in the destruction or adverse modification of designated critical habitat of such species. The EPA Region 4 office

concluded that no consultation with the FWS is required on this fresh water action because the newly applicable criteria associated with the PWS Class use are related to human health protection.

EPA's Review and Findings


The revisions addressed in this document were discussed in a public hearing held in Montgomery, Alabama on July 11, 2019 and were approved for adoption by the Alabama Environmental Management Commission on August 16, 2019. The public hearing was held to allow the public to make written or oral comments. No comments were made that did not support this classification. The revisions identify a total of three segments by name and add the PWS use classification to the middle segment named Duck River (Duck Lake). All segments retain the default use classification of FWS. The revisions were certified and became effective on October 4, 2019.

In a November 4, 2019 letter written to Mary S. Walker, EPA's Regional Administrator, Lance LeFleur, the Director for the Alabama Department of Environmental Management, submitted new and revised WQS for review by the EPA pursuant to Section 303(c) of the CWA. This letter and supporting documentation were received by the EPA on December 17, 2019. Alabama's Attorney General certified that the WQS revisions were duly adopted pursuant to Alabama's law by letter dated September 25, 2019. By adding the PWS use designation, Alabama has specified the appropriate water use to be achieved and protected, consistent with 40 C.F.R. §131.10(a).

Conclusions

Based on the reasoning outlined above, it is our conclusion that the requirements of the CWA and 40 C.F.R. Part 131 have been met for the newly added use classification and the revisions to specify three segments by name. Therefore, the revisions are approved.

2/4/20
Date


Jeannette M. Gettle, Director
Water Division